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RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND

1 ALLAN STEYER (Cal. Bar No. 100318)  
2 JILL M. MANNING (Cal. Bar No. 178849)  
3 STEYER LOWENTHAL BOODROOKAS  
4 ALVAREZ & SMITH LLP  
5 One California Street, Third Floor  
6 San Francisco, California 94111  
7 Telephone: (415) 421-3400  
8 Facsimile: (415) 421-2234  
9 e-mail: [asteyer@steyerlaw.com](mailto:asteyer@steyerlaw.com)  
10 e-mail: [jmanning@steyerlaw.com](mailto:jmanning@steyerlaw.com)

11 DANIEL E. GUSTAFSON  
12 RENAE D. STEINER  
13 JASON S. KILENE  
14 GUSTAFSON GLUEK PLLC  
15 650 Northstar East  
16 608 Second Avenue South  
17 Minneapolis, MN 55402  
18 Phone: (612) 333-8844  
19 Facsimile: (612) 339-6622

20 Counsel for Plaintiff

21 (Additional Attorneys Listed on Signature Page)

22 UNITED STATES DISTRICT COURT  
23 NORTHERN DISTRICT OF CALIFORNIA  
24 OAKLAND DIVISION

25 DAN REMPE, on behalf of himself and all others  
26 similarly situated,

27 Plaintiff,

28 SAMSUNG ELECTRONICS, CO., LTD.; SAMSUNG  
29 SEMICONDUCTOR, INC.; HYNIX SEMICONDUCTOR,  
30 INC.; HYNIX SEMICONDUCTOR AMERICA, INC.;  
31 MICRON TECHNOLOGY, INC.; MICRON  
32 SEMICONDUCTOR PRODUCTS, INC.; NEC  
33 ELECTRONICS AMERICA, INC.; CYPRESS  
34 SEMICONDUCTOR, INC.; ALLIANCE  
35 SEMICONDUCTOR CORP.; FUJITSU LTD.;  
36 FUJITSU AMERICA, INC.; HITACHI LTD.; HITACHI  
37 AMERICA LTD.; MITSUBISHI ELECTRIC CORP.;  
38 MITSUBISHI ELECTRIC & ELECTRONICS USA, INC.;  
39 RENESAS TECHNOLOGY CORP.; RENESAS  
40 TECHNOLOGY AMERICA, INC.; SONY CORP.; SONY  
41 CORP. OF AMERICA; SONY ELECTRONICS, INC.;  
42 TOSHIBA CORP.; TOSHIBA AMERICA CORP.; AND  
43 TOSHIBA AMERICA ELECTRONIC COMPONENTS,  
44 INC.,

45 Defendants.

Case No.

007-01152

CLASS ACTION  
COMPLAINT AND  
JURY TRIAL DEMAND

ADR

EDL

CO 4 SEC. N  
NOTICE OF ASSIGNMENT  
TO MAGISTRATE JUDGE SENT

1 Plaintiff, by his attorneys, brings this civil action for damages on behalf of himself and on  
2 behalf of all others similarly situated in Nebraska. For his Complaint against Defendants,  
3 Plaintiff, upon personal knowledge as to his own acts and status, and upon information and belief  
4 as to all other matters, alleges the following:

### 5 INTRODUCTION

6 1. Plaintiff brings this class action pursuant to Section 16 of the Clayton Act, 15  
7 U.S.C. § 26, to obtain injunctive relief for violations of Section 1 of the Sherman Act, 15 U.S.C. §  
8 1, to recover damages under Neb. Rev. Stat. § 59-801 *et seq.*, and to recover the costs of suit,  
9 including reasonable attorneys' fees, for the injuries that Plaintiff and all others similarly situated  
10 sustained as a result of Defendants' violations of those laws.

11 2. This case arises out of a long-running nationwide conspiracy beginning no later  
12 than January 1, 1998 and continuing through the present ("Class Period"), among all Defendants  
13 and their co-conspirators with the purpose and effect of fixing prices, allocating market shares,  
14 eliminating and suppressing competition, and committing other unlawful practices designed to  
15 inflate and stabilize the prices of Static Random Access Memory ("SRAM").

16 3. As used herein, the term "Static Random Access Memory" includes all types of  
17 static random access memory sold during the Class Period, including, without limitation, high  
18 speed SRAM, low-powered SRAM, synchronous SRAM (including both Late Write and DDR  
19 synchronous SRAM), asynchronous SRAM (including asynchronous fast SRAM), pseudo SRAM  
20 (also known as "PSRAM" or "mobile PSRAM"), DDR SRAM, CellularRAM, and slow SRAM.  
21 For purposes of this complaint, SRAM is defined to exclude all types of dynamic random access  
22 memory ("DRAM") sold during the Class Period, including synchronous DRAM ("SDRAM").

23 4. SRAM is a type of memory that is faster and more reliable than DRAM. The term  
24 "static" is derived from the fact that SRAM does not need to be refreshed like DRAM. Whereas  
25 DRAM supports access times of about 60 nanoseconds, SRAM can support access times as low as  
26 10 nanoseconds. Additionally, the cycle time of SRAM is much shorter than that of DRAM  
27 because it does not need to pause between accesses.

28 5. SRAM is used for a variety of applications including routers, hubs and switches in

1 Local Area Networks ("LANs"), Wireless Area Networks ("WANs") and other computing  
2 equipment.

3 6. SRAM is also used as Level 1, 2, or 3 cache on the motherboards of computers,  
4 including servers. It is used in cellular telephones and other handheld devices, including  
5 Blackberries and other PDAs, Nintendo GameCubes and iPods.

6 7. According to iSuppli Corporation data, use of SRAM for mobile communications  
7 applications increased from 30.6% in 2000 to 44% in 2002.

#### 8 JURISDICTION AND VENUE

9 8. The Court has jurisdiction over the federal claim under 28 U.S.C. §§ 1331 and  
10 1337. The Court has jurisdiction over the Nebraska state law claims under 28 U.S.C. § 1367  
11 because those claims are so related to the federal claim that they form part of the same case or  
12 controversy. The Court also has jurisdiction over the Nebraska state law claims under 28 U.S.C. §  
13 1332 because the amount in controversy for the Class exceeds \$5,000,000, and there are members  
14 of the Class who are citizens of a different state than the Defendants.

15 9. Venue is proper in this District under 15 U.S.C. § 22 and 28 U.S.C. § 1391 because  
16 Defendants reside, transact business, or are found within this District, and a substantial part of the  
17 events giving rise to the claims arose in this District.

18 10. The activities of the Defendants and their co-conspirators, as described herein, were  
19 within the flow of, were intended to, and did have a substantial effect on the foreign and interstate  
20 commerce of the United States.

- 21 a. Defendants and their co-conspirators participated in a continuous and  
22 uninterrupted flow in interstate commerce to customers located in Nebraska;
- 23 b. Defendants and their co-conspirators sold and shipped substantial quantities  
24 of SRAM to customers located in Nebraska;
- 25 c. Data, information, correspondence and financial material were exchanged  
26 between customers located in Nebraska and the Defendants and their co-  
27 conspirators; and/or
- 28 d. Money flowed between banks in Nebraska and the Defendants and their co-

1 conspirators.

2 11. The Defendants (directly or through agents who were at the time acting with actual  
3 and/or apparent authority and within the scope of such authority, including each other as co-  
4 conspirators) have:

- 5 a. Transacted business in Nebraska;
- 6 b. Contracted to supply or obtain services or goods in Nebraska;
- 7 c. Intentionally availed themselves of the benefits of doing business in  
8 Nebraska;
- 9 d. Produced, promoted, sold, marketed or distributed their products or services  
10 in Nebraska and, thereby, have purposefully profited from their access to the  
11 markets in Nebraska;
- 12 e. Caused tortious damage by act or omission in Nebraska;
- 13 f. Caused tortious damage in Nebraska by acts or omissions committed  
14 outside such jurisdictions while (i) regularly doing or soliciting business in  
15 such jurisdictions, and/or (ii) engaging in other persistent courses of conduct  
16 within such jurisdictions and/or (iii) deriving substantial revenue from  
17 goods used or consumed or services rendered in such jurisdictions; and
- 18 g. Committed acts and omissions that Defendants knew or should have known  
19 would cause damage (and, in fact, did cause damage) in Nebraska to  
20 Plaintiff and members of the Class while (i) regularly doing or soliciting  
21 business in such jurisdictions, and/or (ii) engaging in other persistent  
22 courses of conduct within such jurisdictions and/or (iii) deriving substantial  
23 revenue from goods used or consumed or services rendered in such  
24 jurisdictions.

25 12. The Defendants otherwise had the requisite minimum contacts with Nebraska, such  
26 that, under the circumstances, it is fair and reasonable to require the Defendants to come to this  
27 Court to defend this action.



**THE PARTIES****Plaintiff**

13. Plaintiff Dan Rempe, a resident of Lincoln, Nebraska, indirectly purchased SRAM from one or more of the Defendants during the Class Period, for end use and not for resale, and was injured as a result of Defendants' illegal conduct.

**Defendants**

14. Defendant Samsung Electronics Co. Ltd. is a business entity organized under the laws of South Korea, with its principal place of business at Samsung Main Building 250-2 ga, Taepyung-ro Chung-gu, Seoul, Korea. During the time period covered by this Complaint, Defendant Samsung Electronics Co. Ltd. manufactured, sold and distributed SRAM to customers throughout the United States.

15. Defendant Samsung Semiconductor, Inc. is a wholly owned and controlled subsidiary of Defendant Samsung Electronics Co. Ltd. with its principal place of business at 3655 North First Street, San Jose, California. During the time period covered by this Complaint, Defendant Samsung Semiconductor, Inc. sold and distributed SRAM to customers throughout the United States. Samsung Electronics Co. Ltd., and Samsung Semiconductor, Inc. are referred to collectively herein as "Samsung."

16. Defendant Hynix Semiconductor, Inc. is a business entity organized under the laws of South Korea, with its principal place of business at SAN 136-1, Ami-Ri Bubal-eub, Ichon-si, Kyongki-do, Korea. During the time period covered by this Complaint, Defendant Hynix Semiconductor, Inc. manufactured, sold and distributed SRAM to customers throughout the United States.

17. Defendant Hynix Semiconductor America, Inc. is a wholly owned and controlled subsidiary of Defendant Hynix Semiconductor, Inc. with its principal place of business at 3101 North First Street, San Jose, California. During the time period covered by this Complaint, Defendant Hynix Semiconductor America, Inc. sold and distributed SRAM to customers throughout the United States. Hynix Semiconductor, Inc. and Hynix Semiconductor America, Inc. are referred to collectively herein as "Hynix."

1           18. Defendant Micron Technology, Inc. is a Delaware Corporation with its principal  
2 place of business at 8000 South Federal Way, Boise, Idaho. During the time period covered by  
3 this Complaint, Defendant Micron Technology, Inc. manufactured, sold and distributed SRAM  
4 throughout the United States.

5           19. Defendant Micron Semiconductor Products, Inc. is a wholly owned and controlled  
6 subsidiary of defendant Micron Technology, Inc. with its principal place of business at 8000 South  
7 Federal Way, Boise, Idaho. During the time period covered by this Complaint, Defendant Micron  
8 Semiconductor Products, Inc. sold and distributed SRAM to customers throughout the United  
9 States. Micron Technology, Inc. and Micron Semiconductor Products, Inc. are referred to  
10 collectively herein as "Micron."

11           20. Defendant NEC Electronics America, Inc. ("NEC") is a wholly owned and  
12 controlled subsidiary of NEC Electronics Corporation, with its principal place of business at 2880  
13 Scott Boulevard, Santa Clara, California and its manufacturing plant in Roseville, California.  
14 During the time period covered by this Complaint, Defendant NEC sold and distributed DRAM to  
15 customers throughout the United States.

16           21. Defendant Cypress Semiconductor, Inc. ("Cypress") is a business entity organized  
17 under the laws of California, with its principal place of business at 3939 North First Street, San  
18 Jose, California. During the time period covered by this Complaint, Defendant Cypress  
19 Semiconductor, Inc. sold and distributed SRAM to customers throughout the United States.

20           22. Defendant Alliance Semiconductor Corporation ("Alliance") is a business entity  
21 organized under the laws of Delaware, with its principal place of business at 2575 Augustine  
22 Drive, Santa Clara, California. During the time period covered by this Complaint, Defendant  
23 Alliance Semiconductor Corporation sold and distributed SRAM to customers throughout the  
24 United States.

25           23. Defendant Fujitsu Ltd. is a business entity organized under the laws of Japan with  
26 its principal place of business Shiodome City Center 1-5-2 Higashi-Shimbashi, Minato-ku, Tokyo  
27 105-7123, Japan. During the time period covered by this Complaint, Defendant Fujitsu Ltd. sold  
28 and distributed SRAM to customers throughout the United States.

1           24. Defendant Fujitsu America, Inc., is a wholly owned and controlled subsidiary of  
2 Defendant Fujitsu Ltd. Fujitsu Ltd. is a business entity organized under the laws of California,  
3 with its principal place of business at 1250 Arques Ave., M/S 124 Sunnyvale, California. During  
4 the time period covered by this Complaint, Defendant Fujitsu America, Inc. sold and distributed  
5 SRAM to customers throughout the United States. Fujitsu Ltd. and Fujitsu America, Inc. are  
6 referred to collectively herein as "Fujitsu."

7           25. Defendant Hitachi Ltd. is a business entity organized under the laws of Japan, with  
8 its principle place of business at 6-1 Marunouchi Center Building 13F Chiyoda-ku, Tokyo, 100-  
9 8220, Japan. In April of 2003, the semiconductor divisions of Hitachi Ltd. and Mitsubishi  
10 combined to form Defendant Renesas Technology Corporation. During the time period covered  
11 by this Complaint, Defendant Hitachi Ltd. sold and distributed SRAM to customers throughout the  
12 United States.

13           26. Defendant Hitachi America Ltd. is a wholly owned and controlled subsidiary of  
14 Defendant Hitachi Ltd. Hitachi America Ltd. is a business entity organized under the laws of New  
15 York, with its principal place of business at 50 Prospect Avenue, Tarrytown, New York. During  
16 the time period covered by this Complaint, Defendant Hitachi America Ltd. sold and distributed  
17 SRAM to customers throughout the United States. Hitachi Ltd. and Hitachi America Ltd. are  
18 referred to collectively herein as "Hitachi."

19           27. Defendant Mitsubishi Electric Corporation is a business entity organized under the  
20 laws of Japan, with its principal place of business at Tokyo Building 2-7-3, Marunouchi, Chiyoda-  
21 ku, Tokyo 100-8310, Japan. In April of 2003, the semiconductor divisions of Hitachi Ltd. and  
22 Mitsubishi combined to form Defendant Renesas Technology Corporation. During the time period  
23 covered by this Complaint, Defendant Mitsubishi Electric Corporation, Inc. manufactured, sold  
24 and distributed SRAM to customers throughout the United States.

25           28. Defendant Mitsubishi Electric & Electronics USA, Inc. is a wholly owned and  
26 controlled subsidiary of Defendant Mitsubishi Electric Corporation. Defendant Mitsubishi  
27 Electric & Electronics USA, Inc. is a business entity organized under the laws of Delaware, with  
28 its principal place of business at 500 Corporate Woods Parkway, Vernon Hills, IL 60061. During

1 the time period covered by this Complaint, Defendant Mitsubishi Electric & Electronics USA, Inc.  
2 manufactured, sold and distributed SRAM to customers throughout the United States. Mitsubishi  
3 Electric Corporation and Mitsubishi Electric & Electronics USA, Inc. are referred to collectively  
4 herein as "Mitsubishi."

5 29. Defendant Renesas Technology Corporation is a business entity organized under  
6 the laws of Japan with its principal place of business at Marunouchi Building, 4-1, Marunouchi 2-  
7 chome, Chiyoda-ku Tokyo 100-6334, Japan. During the time period covered by this Complaint,  
8 Defendant Renesas Technology Corporation sold and distributed SRAM to customers throughout  
9 the United States.

10 30. Defendant Renesas Technology America, Inc. is a wholly owned and controlled  
11 subsidiary of Renesas Technology Corporation with its principal place of business at 450 Holger  
12 Way, San Jose, California. During the time period covered by this Complaint, Defendant Renesas  
13 Technology America, Inc. sold and distributed SRAM to customers throughout the United States.  
14 Defendants Renesas Technology Corporation and Renesas Technology America, Inc. are referred  
15 to collectively herein as "Renesas."

16 31. Defendant Sony Corporation is a business entity organized under the laws of Japan,  
17 with its principal place of business at 6-7-35 Kitashinagawa, Shinagawa-ku, Tokyo 141-0001,  
18 Japan. During the time period covered by this Complaint, Sony Corporation sold and distributed  
19 SRAM to customers throughout the United States.

20 32. Defendant Sony Corporation of America is a wholly owned and controlled  
21 subsidiary of Sony Corporation, with its principal place of business at 550 Madison Avenue, 27th  
22 Floor, New York, New York. During the time period covered by this Complaint, Sony  
23 Corporation of America sold and distributed SRAM to customers throughout the United States.

24 33. Defendant Sony Electronics, Inc. is a wholly owned and controlled subsidiary of  
25 Sony Corporation, with its principal place of business located at 12450 W. Bernardo St., San  
26 Diego, CA 92127. During the time period covered by this Complaint, Sony Electronics, Inc. sold  
27 and distributed SRAM to customers throughout the United States. Sony Corporation, Sony  
28 Corporation of America, and Sony Electronics, Inc. are referred to collectively herein as "Sony."



1           34. Defendant Toshiba Corporation is a business entity organized under the laws of  
2 Japan, with its principal place of business at 1-1, Shibaura 1-chome, Minato-ku, Tokyo 105-8001,  
3 Japan. During the time period covered by this Complaint, Defendant Toshiba Corporation  
4 manufactured, sold and distributed SRAM to customers throughout the United States.

5           35. Defendant Toshiba America Corporation is a wholly owned and controlled  
6 subsidiary of Toshiba Corporation with its principal place of business at 1251 Avenue of the  
7 Americas, Suite 4110, New York, New York. During the time period covered by this Complaint,  
8 Defendant Toshiba America Corporation manufactured, sold and distributed SRAM to customers  
9 throughout the United States.

10           36. Defendant Toshiba America Electronic Components, Inc. is a wholly owned and  
11 controlled subsidiary of Toshiba Corporation with its principal place of business located at 19900  
12 MacArthur Boulevard, Suite 400, Irvine, CA 92612. During the time covered by this Complaint,  
13 Defendant Toshiba America Electronic Components, Inc. sold and distributed SRAM to customers  
14 throughout the United States. Toshiba Corporation, Toshiba America Corporation, and Toshiba  
15 America Electronic Components, Inc. are referred to collectively herein as "Toshiba."

16 **Co-Conspirators**

17           37. Various others, presently unknown to Plaintiff, participated as co-conspirators with  
18 the Defendants in the violations of law alleged in this Complaint and have engaged in conduct and  
19 made statements in furtherance thereof.

20           38. The acts charged in this Complaint have been done by Defendants and their co-  
21 conspirators, or were authorized, ordered or done by their respective officers, agents, employees or  
22 representatives while actively engaged in the management of each Defendant's business or affairs.

23           39. Each of the Defendants named herein acted as the agent or joint venturer of or for  
24 the other Defendants with respect to the acts, violations and common course of conduct alleged  
25 herein. Each Defendant which is a subsidiary of a foreign parent acts as the sole United States  
26 agent for SRAM made by its parent company.

27 **CLASS ACTION ALLEGATIONS**

28           40. Plaintiff brings this suit as a class action pursuant Rules 23(b)(2) and 23(b)(3) of

1 the Federal Rules of Civil Procedure, on behalf of himself and a Plaintiff Class ("the Class")  
2 composed of and defined as follows:

3 All persons and entities residing in Nebraska who, from January 1,  
4 1998 through the present, purchased SRAM in Nebraska indirectly  
5 from the Defendants for their own use and not for resale.  
6 Specifically excluded from this Class are the Defendants; the  
7 officers, directors or employees of any Defendant; any entity in  
8 which any Defendant has a controlling interest; and any affiliate,  
9 legal representative, heir or assign of any Defendant. Also excluded  
10 are any federal, state or local governmental entities.

11 41. Plaintiff does not presently possess information identifying the exact size of the  
12 Class. Based upon the nature of the trade and commerce involved, Plaintiff believes the total  
13 number of class members is sufficiently numerous such that joinder of all Class members would  
14 be impracticable.

15 42. Numerous questions of law or fact arising from Defendants' anticompetitive  
16 conduct are common to the class. Among the questions of law or fact common to the class are:

- 17 a. Whether Defendants engaged in a contract, combination or  
18 conspiracy among themselves to fix, maintain or stabilize the prices of, or  
19 allocate the market for, SRAM sold in Nebraska;  
20 b. Whether the conduct of Defendants caused prices of SRAM sold in  
21 Nebraska to be artificially inflated to non-competitive levels; and  
22 c. Whether Plaintiff and other members of the class were injured by the  
23 conduct of Defendants and, if so, the appropriate class-wide measure of  
24 damages.

25 43. These common questions of law or fact are common to the class, and predominate  
26 over any other questions affecting only individual class members.

27 44. Plaintiff in this proposed class action asserts claims typical of those of the  
28 individual members of the proposed Class. Plaintiff has no interests antagonistic to those of the

1 Class, and Defendants have no defenses unique to Plaintiff.

2 45. Plaintiff will fairly and adequately represent and protect the interests of the  
3 members of the Class and has no interests antagonistic to the Class. Plaintiff has suffered the  
4 same harm as the members of the Class and has, and will continue to, zealously pursue claims  
5 against Defendants. Plaintiff has retained counsel competent and experienced in the prosecution  
6 of complex class actions, and in particular, counsel has broad experience in complex antitrust  
7 litigation similar in size, scope, and complexity to the present case.

8 46. A class action is superior to the alternatives, if any, for the fair and efficient  
9 adjudication of this controversy. The damages suffered by each individual Class member will  
10 likely be relatively small, especially given the burden and expense of individual prosecution of the  
11 complex litigation necessitated by Defendants' conduct. Thus, it would be virtually impossible for  
12 the Class members individually to redress effectively the wrongs done to them. Moreover, even if  
13 the Class members themselves could afford such individual litigation, the judicial system could  
14 not. Individualized litigation presents a potential for inconsistent or contradictory judgments.  
15 Individualized litigation increases the delay and expense to all parties and the judicial system due  
16 to the complex legal and factual issues presented by this case. By contrast, the class action device  
17 presents far fewer management difficulties and provides the benefits of single adjudication,  
18 economy of scale, and comprehensive supervision by a single court.

19 47. Defendants have acted or refused to act on grounds generally applicable to the  
20 Class, thereby making appropriate final injunctive relief with respect to the Class as a whole.

#### 21 NATURE OF TRADE AND COMMERCE

22 48. Throughout the period of time covered by this Complaint, Defendants and their co-  
23 conspirators engaged in the business of marketing and selling SRAM throughout Nebraska and the  
24 United States. During each year of the Class Period, total sales of SRAM were in the billions of  
25 dollars.

26 49. The market for the manufacture and sale of SRAM is conducive to the type of  
27 collusive activity alleged here. That market is oligopolistic in nature, with Samsung as the clear  
28 market leader. According to the 2004 "Memory Market Backgrounder" available at Samsung's

1 website, the shares of the leading SRAM manufacturers in 2003 were as follows:

2	Samsung	32.5%
3	Renesas	15.0%
4	Cypress	11.6%
5	Toshiba	7.9%
6	NEC	7.2%
7	Hynix	3.7%
8	Sony	4.1%

9 50. According to Samsung's 2006 "Memory Market Overview," also available at its  
10 website, the shares of the top SRAM manufacturers in 2004 and 2005 were as follows:

11		<u>2004</u>	<u>2005</u>
12	Samsung	34%	29%
13	Micron	4%	15%
14	NEC	11%	10%
15	Renesas	6%	5%
16	Toshiba	6%	5%

17 51. Samsung notes in this same document that it holds 30% of the pseudo-SRAM  
18 market and that this segment is forecasted to grow by 33% annually through 2008.

19 52. The market for the manufacture and sale of SRAM is subject to high manufacturing  
20 and technological barriers to entry. Efficient fabrication plants are large and costly. SRAM is also  
21 subject to technological advances and firms within the industry must undertake significant  
22 research and development expenses.

23 53. As a means to further secure their respective positions within the SRAM  
24 marketplace, Samsung, Cypress, NEC, Renesas and Integrated Device Technology (IDT) maintain  
25 membership in the Quad Data Rate (QDR) Consortium. By way of this consortium, participating  
26 companies cooperate in the development of the networking SRAMs. The QDR Consortium dates  
27 back at least as far as 1999.

28 54. The SRAM industry has also been subject to significant consolidation during the



1 Class Period. This trend is exemplified by the IDT's acquisition of Integrated Circuit Systems, Inc.  
2 ("ICSI") in June of 2005. It is further exemplified by the merger in April of 2003 of the  
3 semiconductor divisions of Hitachi Ltd. and Mitsubishi. The resultant entity, Renesas is one of the  
4 leading manufacturers of SRAM.

5 55. Beginning in 1998 and continuing through much of 2001, SRAM prices rose, due  
6 in significant part to the effects of the industry-wide collusion now being investigated by the  
7 Antitrust Division of the United States Department of Justice ("DOJ.") During 2000 alone, the  
8 average selling price of SRAM in the United States increased by an extraordinary 33%. While  
9 SRAM prices declined somewhat during parts of 2001 and 2002, the cartel created by Defendants  
10 operated to mitigate against those declines so that prices were still at supracompetitive levels. As  
11 SRAM prices increased again in 2003 and subsequent years, the collusive activity among the  
12 Defendants maintained those prices at supracompetitive levels.

#### 13 **DEFENDANTS' ILLEGAL CONDUCT**

14 56. On information and belief, in October of 2006, the DOJ sent out subpoenas to at  
15 least nine companies in connection with an investigation of cartel activity in the SRAM industry.  
16 Those companies are: Samsung, Mitsubishi, Toshiba, Micron, Cypress, Sony, NEC, Renesas and  
17 Hitachi.

18 57. A DOJ spokesperson was quoted as saying: "[t]he U.S. Department of Justice's  
19 antitrust division is conducting an investigation regarding anti-competitive practices against chief  
20 SRAM manufacturers." Several of these companies being investigated--Hynix and Samsung--  
21 have already pled guilty to price-fixing in the DRAM industry and have paid substantial fines to  
22 the DOJ for those unlawful activities (\$300 million for Samsung and \$185 million for Hynix).  
23 Elpida Memory, Inc., a DRAM manufacturer created by way of a joint venture between Hitachi  
24 and NEC, two of the Defendants here, was fined \$84 million. Micron, another major SRAM  
25 manufacturer, was the amnesty applicant in the DRAM price-fixing investigation. Mitsubishi  
26 announced on October 16, 2006 that the DOJ is investigating its activities in the DRAM market.

27 58. Several SRAM manufacturers--including Defendants Samsung, Mitsubishi,  
28 Toshiba, Micron, Cypress, Sony, NEC, Renesas and Hitachi--have publicly acknowledged the

1 DOJ investigation and claim to be cooperating with it. Toshiba referred in a press release dated  
2 October 17, 2006 to the fact that the DOJ appeared to be conducting an “industry-wide  
3 investigation.” A spokesperson for Cypress has been quoted as saying that “DOJ is looking at the  
4 market and the practices involved.” A Micron spokesperson effectively conceded that it was a  
5 target of the DOJ investigation, albeit not the “main target.”

6 59. During the period from 1994 to 1997 (the period preceding the Class Period),  
7 SRAM prices in the United States sharply declined and the industry fell from profitability into  
8 steep losses. In 1997, Micron commenced an antidumping proceeding before the Court of  
9 International Trade with respect to SRAM imports from Korea and Taiwan. Those proceedings  
10 were not resolved in Micron’s favor. However, these antidumping proceedings were a factor that  
11 favored collusion. Antidumping cases encourage both importers and domestic producers to raise  
12 prices—the former to avoid further antidumping claims and the latter to establish a high base price  
13 against which to evaluate their future antidumping claims against importers. The DRAM price-  
14 fixing conspiracy prosecuted by the DOJ also took place in a period following antidumping claims  
15 brought by Micron.

16 60. Beginning in 1998 and continuing through much of 2001, SRAM prices rose, due  
17 in significant part to the effects of the industry wide collusion now being investigated by the DOJ.  
18 During 2000 alone, the average selling price (“ASP”) of SRAM in the United States increased by  
19 33%--from an ASP of \$3.93 in 1999 to approximately \$5.24 in 2000. By comparison, the ASP of  
20 SRAM in 1995-97 had dropped from \$5.55 to \$3.64. To the extent that SRAM prices declined  
21 somewhat during part of 2001 and in part of 2002, the cartel created by Defendants and their co-  
22 conspirators operated to mitigate those declines so that prices were still at supracompetitive levels.  
23 Indeed, SRAM prices experienced an upturn for part of 2002. As SRAM prices increased again in  
24 2003 and subsequent years, the collusive activity among the Defendants and their co-conspirators  
25 kept those prices at supracompetitive levels.

26 61. Defendants and their co-conspirators have engaged in a contract, combination, trust  
27 or conspiracy, the effect of which was to raise the prices at which they sold SRAM to artificially  
28 inflated levels.

1           62. Defendants, through their officers, directors and employees, effectuated the  
2 aforesaid contract, combination, trust or conspiracy between themselves and their co-conspirators  
3 by, among other things:

- 4           a. Participating in meetings and conversations, including through various trade  
5 associations and committees, to discuss the prices of SRAM in the United  
6 States;  
7           b. Agreeing, during those meetings and conversations, to charge prices at  
8 specified levels and otherwise to increase and maintain prices of SRAM  
9 sold in the United States;  
10          c. Issuing price announcements and quotations in accordance with the  
11 agreements reached; and  
12          d. Selling SRAM to various customers in the United States at non-competitive  
13 prices.

14                                   **ACTIVE CONCEALMENT**

15          63. Throughout and beyond the conspiracy, Defendants and their co-conspirators  
16 affirmatively and actively concealed their unlawful conduct from Plaintiff. Defendants and their  
17 co-conspirators conducted their conspiracy in secret and kept it mostly within the confines of their  
18 higher-level executives. Defendants and their co-conspirators publicly provided pre-textual and  
19 false justifications regarding their price increases. Defendants and their co-conspirators conducted  
20 their conspiracy in secret, concealed the true nature of their unlawful conduct and acts in  
21 furtherance thereof, and actively concealed their activities through various other means and  
22 methods to avoid detection. Plaintiff did not discover, and could not have discovered through the  
23 exercise of reasonable diligence, that Defendants and their co-conspirators were violating the  
24 antitrust laws as alleged herein until shortly before this class action litigation was commenced.

25          64. As a result of the active concealment of the conspiracy by Defendants and their co-  
26 conspirators, any and all applicable statutes of limitations otherwise applicable to the allegations  
27 herein have been tolled.  
28

**VIOLATIONS ALLEGED**

**First Claim for Relief**

**(Violation of Section 1 of the Sherman Act)**

65. Plaintiff incorporates and realleges, as though fully set forth herein, each and every allegation set forth in the preceding paragraphs of this Complaint.

66. Beginning at a time presently unknown to Plaintiff, but at least as early as January 1, 1998 and continuing through the present, the exact dates being unknown to Plaintiff, Defendants and their co-conspirators entered into a continuing agreement, understanding, and conspiracy in restraint of trade to artificially raise, fix, maintain, and/or stabilize prices for SRAM in the United States, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

67. In formulating and carrying out the alleged agreement, understanding, and conspiracy, the Defendants and their co-conspirators did those things that they combined and conspired to do, including but not limited to the acts, practices, and course of conduct set forth above, and the following, among others:

- a. To fix, raise, maintain and stabilize the price of SRAM;
- b. To allocate markets for SRAM among themselves;
- c. To submit rigged bids for the award and performance of certain SRAM contracts; and
- d. To allocate among themselves the production of SRAM.

68. The combination and conspiracy alleged herein has had the following effects, among others:

- a. Price competition in the sale of SRAM has been restrained, suppressed, and/or eliminated in the United States;
- b. Prices for SRAM sold by Defendants and their co-conspirators have been fixed, raised, maintained and stabilized at artificially high, non-competitive levels throughout the United States; and
- c. Those who purchased SRAM directly or indirectly from Defendants and their co-conspirators have been deprived of the benefits of free and open



1 competition.

2 69. Plaintiff has been injured and will continue to be injured in its business and  
3 property by paying more for SRAM purchased indirectly from the Defendants and their co-  
4 conspirators than it would have paid and will pay in the absence of the combination and  
5 conspiracy, including paying more for personal computers and other products in which SRAM is a  
6 component as a result of higher prices paid for SRAM by the manufacturers of those products.

7 70. Plaintiff and the class are entitled to an injunction against Defendants, preventing  
8 and restraining the violations alleged herein.

9 **Second Claim for Relief**

10 **(Violation of Nebraska Antitrust Law)**

11 71. Plaintiff incorporates and realleges, as though fully set forth herein, each and every  
12 allegation set forth in the preceding paragraphs of this Complaint.

13 72. During the Class Period, each of the Defendants named herein, directly or indirectly  
14 and through affiliates they dominated and controlled, manufactured, sold and/or distributed SRAM  
15 in Nebraska.

16 73. During the Class Period, each of the Defendants named herein, directly or indirectly  
17 and through affiliates they dominated and controlled, did the following to effect their conspiracy to  
18 fix, maintain or stabilize prices of SRAM sold and/or distributed in Nebraska, in violation of Neb.  
19 Rev. Stat. § 59-801 *et seq.*:

- 20 a. Participated in meetings, conversations, and communications in the United  
21 States and elsewhere with competitors to discuss the prices of SRAM to be  
22 sold in Nebraska and the United States;
- 23 b. Agreed, during those meetings, conversations, and communications, to  
24 charge prices of SRAM at certain levels to be sold in Nebraska and the  
25 United States;
- 26 c. Issued price quotations in accordance with the agreements reached; and  
27 d. Exchanged information on sales of SRAM to customers, for the purpose of  
28 monitoring and enforcing adherence to the agreed-upon prices.

74. This horizontal price-fixing conspiracy restrained trade or commerce in Nebraska, and was designed to have, and did have, a substantial and adverse impact on prices for SRAM in Nebraska during the Class Period.

75. As a result, Plaintiff and other members of the Class have sustained damages in an amount to be determined at trial.

### **Third Claim for Relief**

#### **(Unjust Enrichment and Disgorgement of Profits)**

76. Plaintiff incorporates and realleges, as though fully set forth herein, each and every allegation set forth in the preceding paragraphs of this Complaint.

77. Defendants have been unjustly enriched through overpayments by Plaintiff and Class members and the resulting profits.

78. Under common law principles of unjust enrichment, Defendants should not be permitted to retain the benefits conferred via overpayments by Plaintiff and Class members.

79. Plaintiff seeks disgorgement of all profits resulting from such overpayments and establishment of a constructive trust from which Plaintiff and Class members may seek restitution.

### **PRAYER FOR RELIEF**

#### **WHEREFORE, Plaintiff prays:**

1. That the Court determine that the Sherman Act and Nebraska state antitrust law claims alleged herein may be maintained as a class action under Rule 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure;

2. That the unlawful conduct, contract, conspiracy or combination alleged herein be adjudged and decreed to be:

- a. A restraint of trade or commerce in violation of Section 1 of the Sherman Act, as alleged in the First Claim for Relief;
- b. An unlawful combination, trust, agreement, understanding, and/or concert of action in violation of the Nebraska state antitrust laws as identified in the Second Claim for Relief herein;
- c. Acts of unjust enrichment as set forth in the Third Claim for Relief herein.

1           3.       That Plaintiff and the Class recover damages, as provided by federal and Nebraska  
2 state antitrust law, and that a joint and several judgment in favor of Plaintiff and the Class be  
3 entered against the Defendants in an amount to be trebled in accordance with such laws;

4           4.       That Defendants, their affiliates, successors, transferees, assignees, and the officers,  
5 directors, partners, agents, and employees thereof, and all other persons acting or claiming to act  
6 on their behalf, be permanently enjoined and restrained from in any manner: (1) continuing,  
7 maintaining, or renewing the conduct, contract, conspiracy or combination alleged herein, or from  
8 entering into any other conspiracy alleged herein, or from entering into any other contract,  
9 conspiracy or combination having a similar purpose or effect, and from adopting or following any  
10 practice, plan, program, or device having a similar purpose or effect; and (2) communicating or  
11 causing to be communicated to any other person engaged in the sale of SRAM, information  
12 concerning bids of competitors;

13           5.       That Plaintiff be awarded restitution, including disgorgement of profits obtained by  
14 Defendants as a result of their acts of unfair competition and acts of unjust enrichment;

15           6.       That Plaintiff and members of the Class be awarded pre- and post-judgment  
16 interest, and that interest be awarded at the highest legal rate from and after the date of service of  
17 the initial complaint in this action;

18           7.       That Plaintiff and members of the Class recover their costs of this suit, including  
19 reasonable attorneys' fees as provided by law; and

20           8.       That Plaintiff and members of the Class have such other, further, and different  
21 relief as the case may require and the Court may deem just and proper under the circumstances.

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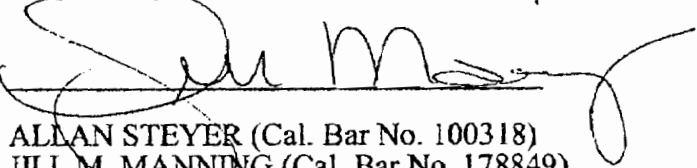
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**JURY DEMAND**

Plaintiff hereby demands a trial by jury on all issues triable by jury.

Dated: February 26, 2007

Respectfully submitted,



ALLAN STEYER (Cal. Bar No. 100318)  
JILL M. MANNING (Cal. Bar No. 178849)  
STEYER LOWENTHAL BOODROOKAS  
ALVAREZ & SMITH LLP  
One California Street, Third Floor  
San Francisco, California 94111  
Telephone: (415) 421-3400  
Facsimile: (415) 421-2234

DANIEL E. GUSTAFSON  
RENAE D. STEINER  
JASON S. KILENE  
GUSTAFSON GLUEK PLLC  
650 Northstar East  
608 Second Avenue South  
Minneapolis, MN 55402  
Telephone: (612) 333-8844  
Facsimile: (612) 339-6622

GENE SUMMERLIN  
JUSTIN FIRESTONE  
OGBORN, SUMMERLIN & OGBORN, P.C.  
610 J Street, Suite 200  
Lincoln, NE 68508  
Telephone: (402) 434-8040  
Facsimile: (402) 434-8044

Counsel for Plaintiff